IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY THE TENTH DAY OF JULY
TWO THOUSAND AND SEVEN

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

&

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 26041 of 2006

Between:
Pusthpanjali Marketing Privte Limited
15-1-642/E, 2nd Floor Kranti Mansion
Feelkhana, Hyderabad rep by its authorised
Signatory Mr. P. Ashok

..... PETITIONER

AND

1 Commercial Tax Officer Hassamgunj Circle
Secunderabad Division Hyderabad.
2 Commercial Tax Officer Vidyanagar Circle
Secunderabad Division Hyderabad.
3 The Deputy Commissioner of Commercial Taxes
Secunderabad Division, Commercial Tax Building
Nampally, Hyderabad.

.....RESPONDENTS

THE HON'BLE MR JUSTICE BILAL NAZKI
&
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION No.26041 of 2006

ORDER: (per Hon'ble Sri Justice S.Ananda Reddy)

This writ petition is filed by the petitioner praying for the issue of a writ of Certiorari, calling for the records relating to the order dated 14.11.2006 passed by the 1st respondent for assessment of value added tax for the period covering July, 2005 to July, 2006 and quash the same, holding that the same is illegal and unjustifiable and consequentially direct the respondents to give input tax credit of Rs.2,46,626/- for the said period.

2. It is stated that the petitioner is a company, registered under the Andhra Pradesh Value Added Tax (for short 'APVAT') Act, 2005 with TIN No.28660109071, carrying on the business of distributor for goods of M/s.Jyothi Laboratories Limited. The petitioner was also registered under the provisions of the repealed APGST Act, 1957. The petitioner is aggrieved by the order dated 14.11.2006 in refusing to allow the input tax credit of Rs.2,46,626/- determined by the 2nd respondent in respect of sales tax paid during the transitional period.

3. It is stated that on the introduction of APVAT Act, 2005, the petitioner had closing stock of goods on which sales tax was paid at the time of purchase by the petitioner. As per the provisions of Sec.13(2) of APVAT Act, 2005, the petitioner is entitled to claim input tax credit in respect of the sales tax paid on the stock lying in its possession as on

01.04.2005. The petitioner filed a claim on 08.04.2005 before the 2nd respondent to allow the credit of a sum of Rs.8,37,868/- as required under the Rule-37 of APVAT Rules, 2005 to avail the credit of tax paid as input tax credit. The claim made by the petitioner was to be determined by the 2nd respondent after verification, and the petitioner is therefore be allowed to take the credit of the tax paid on the opening stock, which could be utilized against the tax payable under the Act. Although the petitioner made claim to allow the credit of input tax for the transitional period, the petitioner could not avail the same as the 2nd respondent has not determined the eligible credit of the tax, before payment of certain amount of tax which the petitioner/assessee was liable to pay as per the determination, without giving credit to the input tax, to which the petitioner is entitled.

4. The petitioner continued to file the returns and pay the taxes on its sales under the Act from April, 2005 onwards, showing the input tax credit on the opening stock, which is to be determined by the 2nd respondent on verification. The petitioner discontinued its business from August, 2005. However, as the registration was continuing, the petitioner continued to file 'Nil' returns in respect of the sales and was showing input tax credit receivable on the opening stock in the returns.

5. It is further stated that the 2nd respondent sent a notice dated 08.09.2005, proposing to allow only a part of the amount claimed by the petitioner. The petitioner replied to the 2nd respondent on 12.09.2005 and the petitioner was informed that there would be verification of books and purchase details by the 2nd respondent and thereafter only the eligibility would be fixed and then the petitioner could avail the said credit. The petitioner further stated that in respect of the similar credits claimed by other dealers, the same was allowed to all the dealers, only after verification by the authorities and not otherwise.

6. The 3rd respondent informed the petitioner by notice dated 20.10.2005 that the 2nd respondent would conduct audit of the petitioner's records under the Act and was come to understand that the same is for the purpose of determining taxes that are due, if any, from the petitioner and also with reference to the claim of the petitioner for input tax credit.

7. Pursuant to the audit programme, as authorized by the 3rd respondent, the 2nd respondent has visited the premises of the petitioner and conducted audit by verification of books of accounts and purchase details on 22.10.2005. On completion of the audit, a statement dated 22.10.2005 was obtained from the petitioner by the 2nd respondent, by which the petitioner undertook to pay Rs.4,75,793/- towards tax payable in respect of the goods which were purchased by it and credit availed and which goods were thereafter returned being sales returns. The 2nd respondent further directed the petitioner to submit a certificate from a chartered accountant regarding the closing stocks held by the petitioner as on 31.03.2005, which was submitted by the petitioner on 16.01.2006.

8. It is further stated that the petitioner, in pursuance of the statement made in respect of the sales returns for the period from April to August, 2005, remitted the tax on 30.01.2006, which was duly acknowledged by the 2nd respondent. It is also further stated that for want of Form VAT-213 for showing the details of adjustment, the petitioner made a statement on a plain paper and filed with the 2nd respondent, which was accepted by the 2nd respondent, without any reservation then or any time thereafter. The cheque for payment of tax of Rs.4,12,280/- was duly credited to the 2nd respondent. But, however, the tax credit, to which the petitioner was entitled, was determined by the 2nd respondent, and the said communication was received by the

petitioner only on 17.07.2006 in Form VAT-116 from the 2nd respondent, who determined the eligibility of the petitioner to claim tax credit of Rs.2,46,626/- on the opening stock, available on the date of the Act came into force. The said order is dated 29.09.2005, containing full of errors, including the reference given in that, as to the filing of the claim by the petitioner, which was stated as 02.12.2005 instead of 08.04.2005, as the very alleged order is stated to have been passed on 29.09.2005, which according to the petitioner, was antedated to deny the claim of the petitioner, on the ground that the petitioner did not make the claim as per the said order, within a period of seven months, as provided in the said order.

9. It is stated that as per the said order dated 29.09.2005, the petitioner is entitled for adjustment from August, 2005 for a period of seven months in proportion as mentioned in the said order. But, as far as the return for the month of August, 2005 and the tax payable thereunder was due as per the provisions of the Act on 20.09.2005. Hence, the period of credit is over even by the date of the said order. In addition, it was stated by the counsel for the petitioner that had the order was received by the petitioner either on the date of the order i.e. 29.09.2005 or immediately thereafter, the petitioner would not have paid a sum of Rs.4,12,280/- on 30.01.2006, without claiming the said amount as and by way of adjustment.

10. It is stated that having communicated the said order to the petitioner on 17.07.2006 it is obligatory for the assessing officer to give credit to the same in the assessment dated 14.11.2006, but the assessing officer rejected the claim of tax credit on the input, on the ground that it was not claimed within the time stipulated. Therefore, the assessing officer not only denied the benefit of giving credit to the input tax, but also initiated proceedings illegally for other consequences. The said action is clearly illegal and without jurisdiction.

11. It is stated that though an appeal lies against the order of the assessment, even the appellate authority would not take a different view in the light of the alleged order passed by the 2nd respondent with reference to the tax credit dated 29.09.2005, on the premise that the petitioner did not make the claim within the time. Therefore, as the claim has been illegally and erroneously rejected by the assessing authority, the petitioner invoked the extraordinary jurisdiction of this Court and sought to set aside the assessment order with a consequential direction to the assessing authority to give the relief, with reference to the tax credit, to which the petitioner is eligible even as per the orders of the 2nd respondent.

12. A counter is filed on behalf of the 1st respondent, disputing and denying the allegations made by the petitioner. The respondents admitted that the assessment order was passed on 14.11.2006 for the tax period from July, 2005 to July, 2006, for which period the petitioner claimed the benefit of input tax credit for a sum of Rs.2,46,626/-, which was determined by the 2nd respondent. It is stated that the petitioner has got an alternative remedy of appeal under Sec.31 of APVAT Act, 2005. Without exhausting the remedy of appeal, the petitioner had approached this Court under Article 226 of the Constitution of India. Therefore, the writ petition is liable to be dismissed.

13. It is admitted by the respondents that the petitioner is an assessee on the rolls of the 2nd respondent, under the provisions of the APVAT Act, 2005. It is stated that on 15.09.20067, under the powers vested in him, the 3rd respondent authorized the 1st respondent to conduct audit of the business of the petitioner, and accordingly, he audited the books of accounts of the petitioner for the period from April, 2005 to July, 2006 on 15th and 16th of September, 2006. During the course of audit, he noticed that the petitioner did not reduce the output

tax to the extent of Rs.80,288/- being the tax at 12.5% of the turnover of Rs.6,42,304/-, which represented sales returns in Form VAT-200. It is also stated that there were other certain infirmities, and when they were asked, the petitioner produced a working sheet on which the receipt of a cheque dated 16.01.2006 for Rs.4,12,280/- was acknowledged by the office of the 2nd respondent, and contended that they filed the said working sheet in lieu of Form VAT-213 before the 2nd respondent as a result of his alleged audit, conducted on 22.10.2005.

14. It is stated that the 2nd respondent informed the 1st respondent while sending the records of the petitioner that he did not conduct the audit authorized as per the proceedings dated 20.10.2005 and the same was intimated to the 3rd respondent on 04.01.2006 as per the procedure prescribed in the audit manual. The statement alleged to have been recorded by the 2nd respondent on his visit is therefore a fabricated document. It is further stated that the petitioner camouflaged the hand written statement of purchase returns as 'Inspection Report' by tagging a typed letter dated 22.10.2005 to it. The statement filed by the petitioner with the office seal of the 2nd respondent substantiate the contention of the respondents.

15. It is stated by the 1st respondent that he had relied on the records transmitted to him by the 2nd respondent and not on his remarks, based on which, it was noticed that the petitioner did not avail the sales tax relief granted in Form VAT-116 dated 29.09.2005, although served on it on 17.07.2006, and was thus, privileged to file Form VAT-213 for January, 2006, incorporating the sum of Rs.2,46,626/- towards the sales tax relief. The respondents also relied upon the alleged endorsement said to have been made by the office Attender who is stated to have served Form VAT-116 on the petitioner on 29.09.2005. Therefore, it is

stated that the petitioner was denied the credit of the sales tax relief for a sum of Rs.2,46,626/- as the claim was made at the time of audit as it was not in accordance with law, as is evident from the assessment order. It is further stated that the assessment order was passed after following the procedure, and further stated that penalty proceedings were invoked pursuant to the proceedings and accordingly, notices are issued, with which this writ petition is not concerned.

16. At the time of hearing, the learned counsel for the petitioner contended that admittedly, the petitioner is entitled for the input tax credit, which was not disputed even by the respondents. In fact, an order was passed allegedly on 29.09.2005, quantifying the amount as Rs.2,46,626/-. But, however, the relief was denied, on the ground that the petitioner did not claim as per the procedure contemplated, and by the time it was claimed, it was beyond the period stipulated. As according to the said proceeding, the credit claim has to be availed for a period of seven months, starting from August,2005. But the very order, even assuming that the order was passed on 29.09.2005, the relief could not be availed for the month of August, as the return was to be filed on 20.09.2005, and along with the return, the tax has to be paid. In addition, if such a credit order was passed by the respondents and communicated to the petitioner, it is unbelievable and unthinkable for a dealer, including the said order to pay the amount of tax to the tune of Rs.4,12,280/- in the month of January, 2006 without claiming adjustment, as admittedly, up to that period, the petitioner is entitled even as per the proceedings of the 2nd respondent dated 29.09.2005.

17. In fact, the claim of the petitioner that the petitioner was showing unquantified tax credit in all the returns that are filed after April, 2005 is not disputed, and if such is the situation, the contention of the respondents that the petitioner did not make any claim is clearly falls on the face of it, in view of the consistent conduct of the petitioner that the

tax credit was being shown in the returns that are filed. The learned counsel for the petitioner also relied upon the following decisions in (1) ***S.T.Officer, Ponkunnam v. K.I.Abraham***[1], (2) ***Mangalore Chemicals & Fertilizers Ltd. V. Deputy Commissioner***[2] and (3) ***Union of India v. Grasim Industries Ltd.***[3] in support of his contentions.

18. The learned special Government Pleader, appearing for the respondents, on the other hand, sought to contend that the petitioner has got a remedy of appeal, therefore, the writ petition itself is not maintainable. Alternatively, it is contended that even on merits also, since the petitioner did not claim the tax credit within the time, as specified in the order, the petitioner is not entitled for the relief sought for. The learned special Government Pleader also contended that thought it was alleged that the order was served on the petitioner only on 17.07.2006, but, as per the endorsement made by the office Attender of the respondent, the order was served on the petitioner on 29.09.2005 itself. Therefore, the writ petition is liable to be dismissed.

19. Heard on either side and considered the material on record.

20. It is not in dispute that the petitioner is a registered dealer, under the provisions of APVAT Act, 2005, and prior to it, it was the registered dealer under APGST Act. 1957. The simple case of the petitioner is that the petitioner is entitled for the input tax credit i.e. the tax, which the petitioner has already paid on the stock available as on 31.03.2005 at the time of purchase. The said claim is not disputed by the respondent. But, however, the respondents' case is that the claim made by the petitioner was determined by proceedings dated 29.09.2005 and the same was served on the petitioner, but the petitioner did not make any clam. Therefore, his claim, at the time of assessment, could not be allowed as the same was barred by limitation.

21. According to the respondents, the relief ought to have been

availed for a period of seven months, as stipulated in the order from August, 2005 to till the end of seven months period. But, by the date of the assessment order dated 14.11.2006, since the said period has been elapsed, the petitioner is not entitled for the relief. The contention of the petitioner, on the other hand, is that unless the claim of the tax credit made by the petitioner is quantified by the 2nd respondent, it is not entitled to adjust tax credit. Such determination was allegedly made under the order dated 29.09.2005, which was served on the petitioner only on 17.07.2006. Therefore, it was not possible for the petitioner/assessee to adjust the tax credit after service of the said impugned order, therefore, such relief was sought for during the assessment proceedings which was rejected in the assessment order dated 14.11.2006. The said rejection was on the ground that the assessee did not make any claim within the stipulated period. Though it was claimed that the respondent was served the impugned order on the petitioner, no proof as to the service of the said order dated 29.09.2005, was filed before this Court.

22. Apart from that, the learned counsel for the petitioner relied upon the judgment of the Apex Court in ***S.T.Officer, Ponkunnam v. K.I.Abraham*** **(1 supra).** The Apex Court, while considering the phrase 'in the prescribed manner' contained in Sec.8(4) of the Central Sales Tax Act, 1956 held that the same does not authorize the rule-making authority to prescribe time limit within which declaration is to be filed by the registered dealer. Therefore, the third proviso to Rule-6(1) is ultra vires of the Act. Under Sec.8(1) every dealer who sells the goods to the Government or to a registered dealer in the course of inter-State trade or commerce, tax shall be payable at 1% of turn over. Under Sub-Sec.(4) it was provided that Sub-Sec.(1) shall not apply, unless the dealer selling the goods furnishes to the prescribed authority in the prescribed

manner:- a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars. While dealing with the said issue as to the prescribed time limit for filing return, the Apex Court held that third proviso to Rule-6 which fixed a final date for submission of the declarations was held to be ultra vires of the provisions of the Act. The Apex Court further observed that *"we are accordingly, of the opinion that the assessee has furnished the declarations in Form-C in the present case within a reasonable time and there has been a compliance with the requirements of Sec.8(4)(a) of the Act. It follows that the High Court was right in quashing the order of assessment made by the sales tax officer and directing him to make a fresh order of assessment after taking into consideration the declaration forms furnished by the assessee".*

23. I n ***Mangalore Chemicals & Fertilizers Ltd. V. Deputy Commissioner*** **(2 supra),** the Apex Court while considering the provisions of exemptions and refund, approved its earlier view in ***Union of India and others vs. M/s.Wood Papers Limited and others (1991 J.T.(1) 151 at 155)***, observing; " *……Truly, speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about the applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction…..*"

24. In that case, the State Government issued a notification on 30.06.1969 providing certain incentives to entrepreneurs starting new industries in the State, pursuant to the State's policy for "rapid industrialization". The notification contains a package of reliefs and incentives including one concerning relief from payment of sales tax.

With reference to the sales tax, it was provided a cash refund will be allowed on all sales tax paid by a new industry on raw materials purchased by it for the first five years from the date of the industry goes into production, eligibility to the concessions being determined on the basis of a certificate to be issued by the Department of Industries and Commerce.

25. In that case, the appellant was one of the eligible industry for exemption as per the notification of 1969. The controversy was only with reference to the manner of effectuating the refund of the sales tax to which the appellant was also entitled to for the assessment year 1976-77. The applicant made such an application to the Deputy Commissioner of Sales Tax on 10.11.1976 for adjustment of the refunds against the sale tax due. This permission was granted with retrospective effect from 01.05.1976, validating the adjustments, which the appellant had made during the interregnum. However, for the subsequent three years viz. 1977-78 to 1979-80, similar applications which were made on 29.03.1977, 20.03.1978 and 08.03.1979 remained undisposed of. In the meanwhile, in anticipation of the permission the appellant adjusted the refund against the tax payable for these years and filed its monthly returns setting out the adjustment so effected.

26. The controversy was whether the appellant was entitled for adjustments not having actually secured the prior permission. It was claimed that as per the subsequent notification dated 11.08.1975 unless permission of renewal is granted by the Deputy Commissioner of Commercial Taxes, the new industry should not be allowed to adjust the returns. Therefore, the claim of adjustment was denied. When the relief of adjustment was denied, the appellant approached the High Court. The High court negatived the claim of the petitioner, but, however, on further appeal, the Apex Court allowed the appeal, setting aside the judgment of the High Court and directed the Deputy Commissioner of

the sales tax to grant permission for adjustment for the disputed period.

27. In ***Union of India v. Grasim Industries Ltd.*** **(3 supra),** the Division Bench of the Rajasthan High Court, while considering the delay in filing the declarations, with reference to the receipt of capital goods, as contemplated under the provisions of the Central Excise Act and the Rules, it was held that filing of declaration is necessary, but the limitation prescribed is not mandatory. Conditions for availing credit are payment of duty as evidenced by the documents and the receipt and use in the manufacture of the capital goods credit cannot be denied on procedural lapses in making declaration or furnishing incomplete particulars, dismissed the appeal filed by the Union of India in respect of the grant of relief under the provisions of the Central Excise Act.

28. In the light of the above judgments, if we consider the claims of the petitioner, there is no dispute that the petitioner is entitled for the tax credit in respect of the stock as on the date of the new Act came into force, and in fact, it is also quantified as to the eligibility of the petitioner. But, however, according to the petitioner, though it was claimed without specifying the amount for want of quantification by the 2nd respondent, but deduction was not effected, as it was not in fact, determined and communicated to the petitioner.

29. Admittedly, the petitioner paid an amount of Rs.4,12,280/- towards the tax payable for the disputed period in the month of January, 2006. Had the petitioner/assessee received the order dated 29.09.2005, quantifying the eligibility of tax credit, the petitioner/assessee would have claimed deduction of the same by way of credit. Further, the respondents did not produce any proof in support of their claim that the order dated 29.09.2005 was served on the petitioner/assessee on the date of the order or immediately thereafter. Therefore, the impugned assessment, negativing the claim of the assessee towards the tax credit, determined by the Department, is illegal and unsustainable.

30. Under the above circumstances, we set aside the impugned assessment order, and further direct the respondents to frame a fresh assessment, after giving credit to the amount, to which the petitioner/assessee is entitled, as per the order of the 2nd respondent, dated 29.09.2005 i.e. Rs.2,46,626/-.

31. The Writ Petition is, accordingly, allowed. No order as to costs.

BILAL NAZKI,J

S.ANANDA REDDY.J

Dated: 10.07.2007
Dsr

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[1] AIR 1967 Supreme Court 1823 (V.54 C.356)

[2] 1991 (55) E.L.T. 437 (SC)

[3] 2006 (204) E.L.T. 230 (Raj)